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IN THE

Supreme Court of the United States

OCTOBER TERM 1952

No. 52

JOHN TERRY, ET AL., *Petitioners*,

v.

A. J. ADAMS, ET AL., *Respondents*

PETITION FOR REHEARING

E. E. TOWNES,
C. I. McFARLANE,
EDGAR E. TOWNES, JR.,
Counsel for Respondents,
A. J. ADAMS, ET AL.

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TO THE HONORABLE SUPREME COURT OF THE UNITED STATES OF AMERICA:

Come now A. J. Adams, et al., Respondents in the above entitled cause and present this, their petition for a rehearing of the said cause, and, in support thereof, respectfully show:

I.

Respondents present this petition for rehearing herein due to the extreme importance of the questions involved because:

(1) For the first time this Court has held that the State has no right or authority to determine and establish its own electoral machinery, where such machinery makes no discrimination whatever for or against any individual or group. The State of Texas has provided the exclusive and mandatory method and procedure whereby persons may be nominated for public office. This Court, regardless of the absence of discrimination in the State required processes, has stricken down the exclusive methods and procedures and has assumed jurisdiction to dictate and provide for other and different machinery.

(2) This Court has assumed jurisdiction beyond the provisions of the Fourteenth and Fifteenth Amendments to the Constitution and of the Elective Franchise Statute in that it has assumed to govern the actions of an organization which forms no part of the official State electoral machinery, and which the State admittedly does not control; and while for the moment the Court holds that the Fifteenth Amendment "excludes social or business clubs" and that "not every private club, association or league organized to influence public candidacies or public action must conform to the Constitution's restrictions on political parties"; nevertheless, if the present opinions and decisions stand, all elections public or private, in the last analysis will be subject to periodic opinions of the Supreme Court as to whether the action of a majority or a minority group, club or organization is actually the State action, regardless of State statutes containing strict requirements.

(3) The effect of the Court's opinion is to force upon the States, by presumptions, agents which it does not want and hold the State responsible for any and every act of such individual agent, whether within or without official capacity, and even though such acts be unrecognized and prohibited by State law.

II.

Grounds for Rehearing

1. This Court has grievously erred in failing and refusing to recognize (1) that the Fifteenth Amendment, quoted in the opinions, provides that the right to vote "shall not be denied or abridged by the United States or *by any State* * * *"; and (2) that the Elective Franchise Statute: 8 U.S.C.A., Sec. 31, is with reference to voting at an *election by the people*, "any Constitution, law, custom, usage, or regulation of any State * * * or by or under *its authority*, to the contrary notwithstanding;" and, therefore, (3) that State action only—and not acts by individuals or groups—is the subject matter thereof.

2. The predominant issue before the Court in this case is whether or not the alleged discriminations result from State action. In this cause, the Court, through its decision, has extended its construction of the Fourteenth and Fifteenth Amendments to the United States Constitution to include unofficial action by private individuals in alleged infringement of civil rights; whereas, heretofore, this Court, in accordance with the express directions of said Amendments, has properly limited its jurisdiction over such discrimination and infringement to instances based solely upon State action, as distinguished from individual action.

3. In the opinions delivered respectively in this cause by Justices Black, Clark and Frankfurter, the Court has mistakenly and erroneously found, or improvidently adopted the findings of the District Court, that the Jaybird Association is a political party; that the Jaybird primary has become an integral part of the elective process that determines who shall rule and govern in Fort Bend County. The verity of such findings are challenged as unsupported by and contradictory to the stipulated facts, portions of which stipulation are as follows:

"There is no political organization in Fort Bend County, Texas, by the official name or designation "Jaybird Party". At all times since 1889, however, there has been and still is an organization in Fort Bend County, Texas, by the name of "Jaybird Democratic Association of Fort Bend County, Texas". Said Association, however, has not (fol. 35) since 1938, and it does not: (a) Have a State organization; (b) Follow or attempt to comply with any of the provisions of Article 3163 of the Revised Statutes of Texas, or of any other statutes of the State of Texas with reference to primary elections or general elections; (c) Hold any convention or "primary election" on the legal primary election day, to-wit: The fourth Saturday in July or the fourth Saturday in August, of any year; (d) Hold any primary convention in any precinct on the Saturday preceding a legal primary election day; (e) By the chairman of a county committee, or otherwise, certify to the County Clerk of Fort Bend County, Texas, or to the County Judge thereof, or to any official committee or other representative of the Democratic or Republican Party, any nominations or indorsements made by the Association; (f) Have, or cause to be, printed in a separate column headed by the Association name any nominations on any official ballot used, or for use in, a primary or general election held on a legal primary election day or general election day; (nor does the name, Jaybird Democratic Association of Fort Bend County, Texas, or any part or indication thereof, appear on any ballot in any election other than the primaries, or other special voting occasions, held by the Association itself and alone); (g) Make, or cause to be made, a written application to the County Judge for such printing, signed and sworn to by 3% of the entire vote cast in Fort Bend County at the last preceding general election." (R. 24-25)

* * *

"The Ballots from each of the Association voting precincts are canvassed by the Executive Committee

to determine which person seeking the indorsement of the Association for each position has received the greatest number of votes. The Executive Committee of the Association declare the results of such canvass of the returns and announce the identity of the respective persons who have so received the greatest number of votes at the May Jaybird Democratic Association of Fort Bend County, Texas, for the respective positions.

"No officer nor Committee of such Association certifies the result of the Association membership vote, nor any nominations of the Association, to the County Clerk of Fort Bend County, Texas, nor to the Democratic Party Executive Committee nor to the Committee or official of any party with a state-wide organization.

"XII.

"There is no compulsion upon any person who receives the indorsement of the Jaybird Democratic Association of Fort Bend County, Texas, for a particular office, to run for that office or any other office. In the event such indorsee of the Association does desire to run for such office he may do so; but if he does so run for such office he must himself file his application with the Executive Chairman or Committee of the Democratic Party for the position on the Democratic Party ballot for the July primary of such Democratic Party, and must himself pay the fee as provided by law. Neither the Jaybird Democratic Association nor its Executive Committee files an application with the Democratic Party Executive Committee or Chairman that the Jaybird Democratic Association nominee be placed on the ballot for the Democratic Party July primary election. There is nothing on the ballot of the Democratic Party primary to indicate that any person appearing thereon does or does not have the indorsement of the Jaybird Democratic Association.

"The name of the applicant for a place on the Democratic Party ballot is not placed on said ballot unless

he complies with the laws of the State of Texas, even though such applicant were indorsed by the Jaybird Democratic Association; and every qualified applicant who makes the required application to the Democratic Executive Committee and pays the requisite fee is placed on the Democratic Party primary ballot for the July Democratic primary though not indorsed by the Jaybird Democratic Association. (R. 28-29) * * *

"In the last few years some of the members of the Negro race have offered to vote in the Democratic Party Primaries and no member of the Negro race who had qualified under the laws of the State of Texas to vote has been refused the right to vote. Some of the members of the Negro race have offered to vote in a general election in Fort Bend County, Texas, and no member of the Negro race qualified to vote has been refused a vote." (R. 29) * * *

"XIV.

"The Jaybird Democratic Association of Fort Bend County, Texas, is not, and does not have, a state organization, but limits its May and June Association primaries to only the county and precinct offices, except that the membership of the Association does vote its preference for the office of District Clerk in Fort Bend County.

"The persons seeking the indorsement of the Jaybird Democratic Association of Fort Bend County, Texas, at its May or June Primaries are not required by the Association to file any expense account and do not file expense accounts with any State or local official, Committee or Board." (R. 30) * * *

4. The decision of the Court made in this case inescapably involves the repeal of the election laws of the State of Texas which provide the exclusive method whereby citizens may organize and become a political party, and, as such, participate in primary elections legally authorized under the laws

of this State. The real issue before the Court is: Does this Court recognize that the State alone has the right to enact laws providing for primary and general elections to be held in this State applying to all citizens alike without discrimination? No outspoken attack upon the Texas statute has yet been made in this case.

5. The Court has relied upon the cases of SMITH V. ALLWRIGHT; RICE V. ELMORE; and BASKIN V. BROWN, in support of their conclusion in this case. The basis of the decisions made in each of these three cases was that the discrimination was exercised by the State, which is not present here.

6. The decision is erroneous in that careful reading of each opinion shows that the element of State action was assumed, as clearly stated in the opinion of Justice Frankfurter, and as clearly apparent from the opinions of Justices Black and Clark, one presumption being built upon another contrary to actual facts affirmatively stipulated, and contrary to time-worn established legal principles. Some of these presumptions are: (1) That State election officials participated in the Jaybird activities and primaries. There is nothing in the record to support this presumption. (2) That such presumed participation was in the capacity of a State official; which likewise is wholly unsupported by the record. (3) That Presumptions (1) and (2) would support a further presumption that the State participated in the activities of the Jaybird Association as complained of, which third presumption is likewise wholly unsupported by the record and in violation of affirmative facts. This is the sole basis of the Court's claim that the action complained of is State action.

Wherefore, upon the foregoing grounds, it is respectfully urged that this petition for a Rehearing be granted and that upon further consideration the judgment and opin-

ions of this Court be set aside and withdrawn and that judgment be entered herein affirming the judgment of the Court of Appeals.

Respectfully submitted,

E. E. TOWNES,

C. I. McFARLANE,

EDGAR E. TOWNES, JR.,
Counsel for Respondents,
A. J. ADAMS, ET AL.

I, the undersigned, one of the counsel for the above named respondents, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

Counsel for Respondents,
A. J. ADAMS, ET AL.